

REMARKS

Applicant's counsel thanks the Examiner for the careful consideration given the application. In response to the Examiner's suggestion, claims 12 and 13 have been amended. Support for the amendment to claim 12 can be found at page 9, lines 11-15. New claim 14 has also been added; this claim finds support at page 9, lines 11-14. Support for the amendment to claim 1 can be found at page 5, line 20; support for new claim 15 can be found at page 10, lines 25-29.

35 USC § 103

At page 6, lines 6-7 of the Office action, the Examiner confirms that Alander et al. is silent about the limitation of the present claim 1 "wherein the collection is carried out in various segments by means of individual brushes". The Examiner states, on page 6, lines 7-9 of the Office action, that a person of ordinary skill in the art would have known to change the brush while collecting samples from different segments of the intestinal wall to prevent contamination. The Examiner also asserts that further motivation is found in Patwari et al.

However, this is not correct. Patwari et al. relates to upper GI endoscopy for the detection of H. pylori (Hp) and trophozoites of Giardia lamblia (Glt) (Abstract lines 1-3). It is known that the H. pylori (Hp) and trophozoites of Giardia lamblia (Glt) are pathogenic bacteria; see www.wikipedia.org; they are pathogenic and not probiotic bacteria. Claim 1 now clearly requires probiotic bacteria. Further, these two pathogens Hp and Glt can not be used for preparing a medicament to treat and/or prevent alterations of the intestinal flora. Claim 8 requires that one or more probiotic bacteria strains be obtained and used to prepare a medicament to treat and/or prevent alterations of the intestinal microflora. Since they are pathogenic, the pathogens Hp and Glt cannot be used to prepare such medicaments and accordingly claim 8 clearly defines over the applied references.

Also, regarding Patwari, in Materials and Methods, at page 516, it is reported that "The brush was retracted under the sheath, ... performed on glass slides, placed in 95% ethyl alcohol and later examined for pathogen(s) ...". In this condition in the presence of ethyl alcohol the brushed pathogens are going to die. In other words, in order to be detected the pathogens must

be killed. Clearly claim 6 defines over this reference, since claim 6 requires that the bacteria be cultured after collection. If the pathogens of Patwari are killed, they cannot be cultured. Claim 6 is accordingly clearly patentable.

Further, the Examiner states that motivation to isolate and collect different bacteria from different tissue are found in Reuter et al., (page 6, last paragraph, of the Office action).

Reuter refers to post mortem cases which are analyzed using an automatic system sampling at defined times, see Abstract, lines 11-14. This reference is completely silent about the brushing feature. Samples were taken by excision of ligated parts from the intestine, page 44, right hand column, last three lines from the bottom. Clearly Reuter does not supply any of the features of the present invention which are missing from the Alander reference; Reuter is accordingly not materially useful.

As mentioned, claim 8 as now presented is clearly patentable because neither Alander nor Patwari disclose a method for preparing a medicament using probiotic bacteria strains obtained by the process of claim 1; claim 8 should accordingly be allowed.

For the foregoing reasons, it is clear that the claims as now presented are in condition for allowance, which is respectfully requested.

With the June 28, 2007 Office action, the Examiner returned an initialled copy of applicant's Form PTO-1449. However, applicant notes that the first two references, being a U.S. patent publication and a European patent, were not initialled through oversight. Applicant is enclosing a clean copy of the Form PTO-1449 originally submitted and requests that the Examiner return a copy with the next communication wherein each of these two references is initialled.

If any further fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. HOFF-39568.

Respectfully submitted,

PEARNE & GORDON LLP

By 
John P. Murtaugh, Reg. No. 34226

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108
Phone: (216) 579-1700
Fax: (216) 579-6073

Date: 9-22-08

Form PTO-1449	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY. DOCKET NO. 39568	INTL. SERIAL NO. PCT/IB2004/002446
INFORMATION DISCLOSURE CITATION BY APPLICANT <i>(USE SEVERAL SHEETS IF NECESSARY)</i>		APPLICANT: Giovanni Mogna et al.	
		INTL. FILING DATE: July 30, 2004	GROUP ART UNIT:

U.S. PATENT DOCUMENTS							
Examiner Initial		Document No.	Date	Name	Class	Subclass	Filing Date If Appropriate
	A	2001/014322 A1	8/2001	Chen et al.			
	B						

FOREIGN PATENT DOCUMENTS							
		Document No.	Date	Country	Class	Subclass	Translation
	C	EP 0 861 905	9/1998	EPO			
	D						

OTHER REFERENCES <i>(Including Author, Title, Date, Pertinent Pages, Etc.)</i>		
	E	ALANDER M. et al., "Recovery of Lactobacillus rhamnosus GG from human colonic biopsies", LETTERS IN APPLIED MICROBIOLOGY, vol. 24, no. 5, 1997, pages 361-364; XP001204562, ISSN: 0266-8254, abstract, page 362 - left-hand column, paragraph 2.
	F	DATABASE WPI, Section Ch, Week 200445, Derwent Publications Ltd., London, GB; Class B04, AN 2004-472329; XP002312255 & JP 2004 180656 A (MATSUMOTO S), July 2, 2004, abstract & Patent Abstracts of Japan, vol. 2003, no. 12, December 5, 2003 & JP 2004 180656 A (UEDA TORU; MATSUMOTO SATOSHI), July 2, 2004, abstract & JP 2004 180656 A (UEDA TORU; MATSUMOTO SATOSHI), July 2, 2004.
	G	DATABASE WPI, Section Ch, Week 200039, Derwent Publications Ltd., London, GB; Class B04, AN 2000-450059, XP002312256 & RU 2 139 070 C1 (SHENDEROV B A), October 10, 1999, abstract & RU 2 139 070 C (SHENDEROV BORIS ARKAD EVICH), October 10, 1999.
	H	SAARELA M. et al., "Probiotic bacteria: safety, functional and technological properties", BRAUWELT, NUERNBERG, DE, Journal of Biotechnology, vol. 84, no. 3, December 28, 2000, pages 197-215; XP004314235, ISSN: 0168-1656, the whole document.
	I	JONG S.C. et al., "Probiotics for Humans and Animals", ATCC QUARTERLY NEWSLETTER, ROCKVILLE, MD., vol. 1, no. 13, 1993, pages 1-2, 10-11; XP002072789, ISSN: 0894-9026, the whole document.
	J	VON WRIGHT Atte et al., "The survival and colonic adhesion of Bifidobacterium infantis in patients with ulcerative colitis", INTERNATIONAL DAIRY JOURNAL, vol. 12, no. 2-3, 2002, pages 197-200; XP009042095, ISSN: 0958-6946, abstract, the whole document.
	K	POXTON I. R. et al., "Mucosa-associated bacterial flora of the human colon", JOURNAL OF MEDICAL MICROBIOLOGY, vol. 46, no. 1, 1997, pages 85-91; XP002312254, ISSN: 0022-2615, abstract, page 86 - left-hand column, paragraph 3.
Examiner:		Date Considered
*Examiner: Initial if reference considered, regardless of whether citation is in conformance with MPEP 609; Draw line through citation if not in conformance <u>and</u> not considered. Include copy of this form with next communication to applicant.		